

## **INITIAL STATEMENT OF REASONS:**

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt new Article 1.6., Section 3269 of Subchapter 4, Chapter 1 of Title 15, Division 3, of the California Code of Regulations (CCR), concerning the integrated housing of inmates.

In July, 2000, inmate Johnson, incarcerated with the CDCR, filed a complaint with the courts alleging that the Department's policy of racially segregating all inmates in reception center cells violated his rights under the Equal Protection Clause. In *Johnson vs. California*, the Federal District Courts and the Ninth Circuit Courts of Appeals found in the Department's favor. The case was elevated to the United States Supreme Court for review. The Supreme Court did not rule on the constitutionality of the Department's housing practices. Instead, the court ruled that anytime a racial classification is at issue, the "strict scrutiny" standard should be applied. The Supreme Court remanded the case back to the lower court. Application of this new standard requires CDCR officials to ensure that the policy, adopted to prevent violence by racially-based gangs, is narrowly tailored to address necessities of prison security and discipline. Once the case was remanded to the Ninth Circuit Court, the parties agreed to mediation. The CDCR entered into a mediated agreement that stipulates that CDCR will no longer use race as the sole determining factor in housing at reception centers and general population institutions.

The primary objective of this new regulation is to ensure that race will not be used as a primary determining factor in housing its inmate population. All inmates' housing assignments shall be made on the basis of available information, individual case factors, and objective criteria, to implement an integrated housing plan. It is the intent of the Department to ensure that housing practices are made consistent with the safety, security, treatment, and rehabilitative needs of the inmate, as well as the safety and security of the public, staff, and institutions.

The Department has long been proactive in its integration policies in many areas such as women's housing, institution dining rooms, dormitories, camps, classrooms, work assignments, yards, and visiting. The Department has developed a housing plan that proposes to assign inmates to housing using several criteria, rather than race, as the determinative factors. The housing plan involves an interview with the inmate, a review of the inmate's central file, and a review of all available and relevant information. This plan will be used in both reception centers and general population institutions. It is noted that female institutions currently house female inmates in an integrated manner, so the major shift in housing assignment procedures will be in the male institutions. The plan actually allows for far more versatility in housing male inmates than currently is in place. Once implemented in male institutions, the new policy will increase housing options and flexibility significantly. The Department's housing plan will use all available information to determine the inmate's eligibility for integration and will assign inmates to the first available and appropriate bed based upon their integration eligibility. This housing plan will reduce racial factors in celling decisions and promote inmate integration where safe and appropriate to do so.

Implementation of the integrated housing plan will occur over several phases. The first phase will occur upon adoption of the regulations in 2007; the Department will update the authorized computer tracking system to include coding that will be used to identify each inmate's eligibility to integrate. Integrated Housing Codes (IHC) for inmates will be assigned at reception centers during intake, and during initial, annual, and other classification committee meetings at general population institutions. On January 1, 2008, actual implementation of the integrated housing plan will commence at designated facilities such as reception centers. On January 1, 2009, the integrated housing plan will begin to be implemented simultaneously at all remaining general population institutions and reception centers, over a period of time.

The Department has reviewed the integrated housing plans of other state correctional agencies. Integration in other states has assisted in the management of gangs and disruptive groups, reduced violence, increased housing options, and reduced racial tension. Integration in other states has also assisted with breaking down prejudicial barriers, perceptions and attitudes, promoting increased tolerance of others, and reflecting community norms.

The integrated housing plan was designed with an overarching strategy for safe implementation. The plan does not call for forced integration and provides viable options for responding to non-compliance, such as Rules Violations Reports and alternative housing placement. Inmates who attempt to manipulate the policy, such as becoming violent in order to get a restricted IHC, will be charged with the appropriate rules violation and, if appropriate, will be housed in alternative and more restrictive housing. The integrated housing plan also applies to the Administrative Segregation Unit (ASU), but will not supersede safety and security concerns and/or special housing needs. Eligibility for integration will ultimately be determined by classification committee action and will involve both close scrutiny and accountability. Staff liability remains the same; the plan requires staff to exercise sound custodial discretionary decision-making using existing practices for safe housing. The integrated housing plan does not supersede existing Departmental safety and security measures. Should an institution experience a disturbance or riot that is gang or race related, the integrated housing plan will be temporarily suspended if necessary, and would result in a separation and rehousing of offenders who pose a threat to one another.

Offender non-compliance with this policy does not result in automatic placement in alternative housing. The specific behavior or act and accompanying threat to safety and security will determine if alternative housing is appropriate. The Department's expectation is that inmates who are eligible for housing in an integrated setting will do so.

Additional staffing to code inmate's and collect data is necessary to implement this program. These costs have been identified in a Finance Letter and Budget Change Proposal. However, the Department does not know how many eligible inmates will nonetheless refuse to participate. If the numbers are significant and drive demand for more expensive secure housing, the Department may seek additional funding once the program is fully implemented.

#### **DETERMINATION:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected private persons than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

#### **ASSESSMENTS, MANDATES AND FISCAL IMPACT:**

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing business, or create or expand business in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or

private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not directly affected by the internal management of State prisons; or on prison housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

**Subsections 3005(a) 3005(b) remain unchanged.**

Subsection 3005(c) is adopted to provide a new and distinct category of inmate misconduct particular to an inmate's refusal to accept a housing assignment. Once an inmate housing assignment has been determined, an inmate's refusal of that assignment will subject him to disciplinary action for obstruction of a peace officer in the performance of their duties.

**Subsection 3005(c) is renumbered to 3005(d) and remains unchanged.**

**Article 1.6., Section 3269.1 of Subchapter 4, Chapter 1 of Title 15, Division 3, of the CCR, Inmate Housing is adopted.**

**Section 3269.1 is adopted** to clarify that the Department will no longer use race as a primary determining factor in housing its inmate population, but shall make housing assignments on the basis of available documentation, individual case factors, and objective criteria. Housing assignments will be determined in a manner that will ensure the safety, security, treatment, and rehabilitative needs of the inmate are considered, as well as the safety and security of the public, staff, and institutions. The integrated housing plan will be implemented in several phases over a three year period, commencing with assigning housing codes to each inmate, then implementing integrated housing at specific facilities, and finally implementing integrated housing at all facilities statewide.

**Subsection 3269.1(a) is adopted** to specify that the Department's housing protocol will require inmates to be housed in an appropriate bed based on their assigned IHC and individual case factors.

**Subsection 3269.1(b) is adopted** to establish that an IHC will be assigned to each inmate based on case factors and an individual interview, with the IHC to be reviewed for appropriateness at least at every Annual Review, or as case factors may change. A classification committee shall assess case factors, relevant available information, and the interview(s) conducted, to determine integration eligibility and housing, clearly documenting the reason for the decision. In keeping with current classification actions and decisions, the inmate will be housed accordingly.

**Subsections 3269.1(b)(1) through 3294.3(b)(5) are adopted** to delineate the five specific IHC's that can be assigned to inmates based on inmate participation in the housing assignment process and on their individual case factors. The IHC's will identify if an inmate is racially eligible to participate in the IHP, whether they are partially restricted from participating, whether they are restricted such that they should live with only their own race, whether they are restricted temporarily by custody, or whether they are restricted by refusal.

**Subsection 3269.1(c) is adopted** to specify that the housing assignment process will commence each time an inmate arrives at a facility Receiving and Release unit, and that integrated housing assignment eligibility is based on an interview with the inmate as well as a review of the supporting documents.

**Subsection 3269.1(d) is adopted** to clarify that a new arrival at a facility, or an inmate who requires movement within a facility, will be housed in the first available and appropriate bed, taking into consideration all relevant case factors and other available information. Also, staff are to ensure that current housing policies regarding special category offenders covered under specific litigation remain in place, e.g., Coleman, Clark, Armstrong, Plata, and single-cell status, etc. In keeping with existing policies governing the safe and secure housing of such inmates, staff will ensure related housing practices take precedence over the integrated housing plan.

**Subsection 3269.1(e) is adopted** to specify that an inmate that refuses to be housed in appropriately determined housing shall be subject to the disciplinary process, with the potential to be rehoused in alternative and more restrictive housing. Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, Refusing to Accept Assigned Housing, for the specific act of Willfully Obstructing, Delaying, or Resisting a Peace Officer in the Performance of Their Duty. The inmate shall be considered for placement in more restricted housing such as an Administrative Housing Unit or a Segregated Housing Unit (SHU). The inmate may elect to participate in the IHP at any time during this process.

**Subsection 3269.1(f) is adopted** to direct staff to also impose disciplinary restrictions on inmates who refuse to participate in the IHP. A finding of guilt in a disciplinary hearing for a first offense would result in the loss of such privileges as canteen, appliances, vendor packages, telephone privileges, and personal property, for a period of up to 90 days. A finding of guilt for a second or subsequent such offense would result in a loss of those privileges for up to 180 days.

**Subsection 3269.1(g) is adopted** to clarify that a temporary suspension of the integrated housing plan in a particular housing unit can occur if deemed warranted, such as for a racial disturbance or riot. The Warden or designee of that facility shall request approval for a temporary suspension of integrated housing assignments from their mission based Associate Director, consistent with the lockdown and modified program. The integrated housing plan would be resumed upon resolution of the incident.

**Subsections 3315(a) through 3315(f)(L)(2) remain unchanged.**

**Subsections 3315(f)(5)(M)(1) and (2) are adopted** to clarify that an RVR issued for Refusing to participate in the IHP is a serious rules violation, and will result in the loss of privileges such as personal canteen, appliances, vendor packages, telephone privileges, and personal property, for specified time periods for both first and second/subsequent offenses.

**Subsection 3315(g) remains unchanged.**

**Subsections 3341.5 through 3341.5(c)(9)(K) remain unchanged.**

**Subsection 3341.5(c)(L) is adopted** to include Refusing to Participate in the IHP as an offense sufficient to assess a SHU Term for the specified time frames.

**Existing subsections 3341.5(c)(9)(L) through 3341.5(Cc)(9)(M) are renumbered to 3341(Cc)(9)(M) through 3341.5(c)(9)(N) respectively and remain unchanged.**

**Subsection 3341.5(c)(10) through 3341.5(c)(10)(B) remain unchanged.**